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OGC Has Reviewed

Chief, Services Branch.

5 October 1948.

Office of General Counsel.

Transfer of Property between Government Agencies.

1. Your memorandum of 9 September 1948 requests that a decision be rendered as to the authority for the transfer of property from the Federal Communications Commission to the Central Intelligence Agency without an exchange of funds.

2. Although the decisions generally referred to by you are concerned more with the transfer of surplus used property from one recognized Government department to another than with property reconciliations resulting from executive and administrative reorganizations, a resume of the decisions may be considered helpful.

3. With regard to your specific question, you are advised that there is no legal objection to the mere transfer from one bureau or department of the Government to another department of property no longer required for the purposes for which it was appropriated. Such a transfer is not considered to be a sale and is not open to the objection that public property cannot be disposed of without the authority of Congress. (35 O.A.G. 245). This opinion was confined to a consideration of the authority for transfer and questions of reimbursement between appropriations were not discussed.

4. A subsequent decision affords more light on the question of adjustment between appropriations arising from the transfer of supplies or equipment no longer needed by the transferor department. That such a transaction is not a sale was recognized, conversely, by the Comptroller of the Treasury, (25 Comp. Dec. 961), when he held that where equipment is transferred from one Government department to another, payment to the transferor department is not authorized since the transaction is not a sale. Continuing, the Comptroller added that no adjustment of appropriations is required where the expenditures, from the appropriations which have the original expense, have accomplished the purposes for which it was made. A mere transfer without additional expense involves a mere question of accountability and not an adjustment of appropriations, e.g., the transfer of a revenue cutter, no longer suitable as such, to another department for use as a supply vessel in the servicing of coastal lighthouses and lightships.

5. However, in 17 O.A.G. 480, the Attorney General pointed out that a transfer of property for administrative expediency, although not a sale, may involve not only a transfer of property, custody and accountability, but a transfer of cost from one appropriation to another.

6. With respect to property transfers involving reimbursement, it can be stated that the transfer of public property from one bureau or department to another, and the reimbursement of the appropriation from which originally purchased by a transfer of moneys from the appropriation for the object for which the property is to be used, has been recognized by long practice and is often economical and advantageous. Such a transfer is not a sale within the meaning of Section 3618 of the Revised Statutes, and it is not required that the moneys received therefor shall be covered into the Treasury as miscellaneous receipts. But reimbursement is made, and the moneys so received are repaid to the appropriations from which the property was originally purchased, in order that such transfers may not be in contravention of Section 3678 of the Revised Statutes, which provides that all funds appropriated for the various branches of the public service shall be applied solely to the objects for which they were respectively made. (12 Comp. Dec. 668; 14 Comp. Dec. 641; and 21 Comp. Dec. 819 support the foregoing.)

7. The firmness of the above principles is demonstrated by an interpretation of the Act of July 11, 1915, 41 Stat. 132, by the Comptroller of the Treasury. The Act provides:

"The interchange without compensation therefor, of military stores, supplies, and equipment of every character, including real estate owned by the Government, is hereby authorized between the Army and the Navy upon the request of the head of one service and with the approval of the head of the other service."

The Comptroller held that the Act did not contemplate a department transferring its property to another department where that action would put the transferor department to the expense of procuring other property to replace that transferred.

8. As previously stated, the reasoning of the Attorney General and other authorities has been based on voluntary transfers of property between Government departments and not on transfers of property accompanied

by a transfer of functions, personnel, records, etc., caused by executive or administrative reorganizations, consolidations, or eliminations.

9. You will recall that Executive Order 9621, dated 20 September 1945, terminated the Office of Strategic Services and certain of the functions, personnel, records, etc., were transferred to the Secretary of War, where a Strategic Services Unit was created. By Presidential Directive, dated 22 January 1946, the President directed the respective heads of State, War and Navy to assist in the establishment of a Central Intelligence Group under a Director of Central Intelligence, responsible to the National Intelligence Authority. Pursuant thereto, the Acting Secretary of War, by memorandum dated 3 April 1946, directed the Director of the Strategic Services Unit to make available any facilities and services of the Strategic Services Unit which might be useful in the performance of an authorized function of the Central Intelligence Group. Thereafter, and in accordance with Paragraph 5 of N.I.A. Directive No. 5, dated 8 July 1946, property, supplies, and equipment were transferred by the Strategic Services Unit, War Department, to the Central Intelligence Group. The nature of the consolidations, under the circumstances then existing, compels a conclusion that all transfers were intended to be accomplished without reimbursement or adjustments between appropriations.

10. This Office does not consider that the acquisition of property from OSS to SSU to CIA involve an application of the ordinary rules covering the transfer of property between Government departments.

11. It is the understanding of this Office that a reconciliation of the FCC inventory and CIA inventory has not been achieved due to variances in nomenclature, quantities, and the absence of satisfactory records from CIA predecessors. Although it is not clear how an inventory taken by CIG on or about 1 November 1946 will reflect the FCC inventory as of the time of transfer to G-2 of the War Department, due to intervening withdrawals and replenishment of stocks by [redacted] this Office perceives no legal objection to the proposed arrangement on the assumption that a satisfactory reconciliation, or other appropriate administrative measures, can be effected on a basis consistent with the expressions contained herein.

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